

Baltimore County Court; and these not being mere *ex parte* affidavits, but depositions taken under the order of the 25th of August, of that Court; and as in cases of this description, I have not felt myself authorized to revise or reverse any order of the Court from which the case comes, *Strike's Case*, 1 *Bland*, 67; these depositions must now be received and read, as having been sanctioned by that order.

It is a well established rule of this Court, that, on a motion of this kind, the defendant can only ask for a dissolution of the injunction upon so much of his answer as is properly responsive to the bill; no new matter in avoidance, making its appearance for the first time in the answer, can, in this stage of the case, be allowed to form any part of the foundation of the defendant's motion for a dissolution. It is a direct and responsive denial of the facts composing that case on which the plaintiff's equity rests which alone can entitle the defendant to a dissolution of the injunction. *Salmon v. Clagett*, *ante*, 159. Hence, all that has been said by the defendants as to the plaintiffs having, in fact, no corporate capacity, must be considered as new matter in avoidance of the plaintiffs' claim; and therefore cannot be now properly heard and determined upon.

But the suggestions which arise out of this portion of the defence, it is obvious, may be worthy of the gravest consideration *when the Court shall be called on for its judgment upon such a case. In the preamble of the Act of 1824, ch. 32, **416** which is one of the Acts under which the plaintiffs claim to be a body politic, it is said to have been represented, that in consequence of the decrease in their number, it is impracticable, at present, to choose from their body five directors, the number prescribed by their original incorporating Act of 1814, ch. 78; and therefore, it is declared, that three directors only shall be chosen to manage all the concerns of the company. Hence it would seem, that prior to the passage of the last of these Acts, the body politic had actually become extinct, by reason of this impracticability of choosing five directors.

It is certainly within the constitutional scope of the powers of the General Assembly to constitute a body politic of one, or of a plurality of individuals; but if a corporate capacity be given to a plurality, and the stock of the company, by the owning of which alone any individual can be considered as a corporator, is all purchased up, and held by one, it would seem, that the body politic would be thereby virtually dissolved. And as it would seem, it might be considered as a fraudulent evasion of the law, for any one individual, who had purchased all the stock of such corpora-

at the hearing of such motion, shall be considered in connection with the bill, or petition and answers in the cause; 1835, ch. 380, s. 8.